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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

MICHAEL HAT, Plaintiff and Appellant, v. SHARON STEVENS, Defendant and Appellant.	C064791 (Super. Ct. No. CV033639)

Plaintiff Michael Hat appeals from a summary judgment entered in favor of defendant Sharon Stevens in this breach of contract action based on the affirmative defense of unclean hands. Stevens cross-appeals the trial court's denial of her summary judgment motion on the alternative ground that Hat waived his claims against her by executing a general release. We shall dismiss Stevens's cross-appeal because she was not a "party aggrieved" by the summary judgment entered in her favor. (Code Civ. Proc., § 902.) We shall affirm the summary judgment on the alternative ground of waiver -- a

theory the parties briefed and argued in the trial court and on appeal -- and thus, need not decide whether the trial court erred in granting summary judgment on the ground of unclean hands. (See *California School of Culinary Arts v. Lujan* (2003) 112 Cal.App.4th 16, 22 [summary judgment may be affirmed on any correct legal theory, as long as the parties had an adequate opportunity to address the theory in the trial court].) Finally, we shall conclude that we lack jurisdiction to consider whether the trial court erred in denying Hat's motion to compel arbitration of claims related to the release because Hat failed to appeal from the trial court's order denying his motion to stay and compel arbitration as moot.

FACTUAL[1] AND PROCEDURAL BACKGROUND

Hat and Stevens were married in 1982 and divorced in 2000. During their marriage, Hat developed three businesses engaged in the farming of grapes and the production of wine or juice: Michael Hat Farming Company; Capello, Inc.; and Grapeco, Inc. These entities held interests in the following assets: Capello Winery; Grissom Ranch Vineyard; Pond Ranch Vineyard; Coastal Ranch Vineyard; Rampage Ranch Vineyard; Arvin Ranch Vineyard; and Sedan Ranch Vineyard. The parties' respective community property interests in these businesses and assets were not resolved during the divorce proceedings or at any time prior to the bankruptcy proceeding discussed below.

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[1] The facts are set forth in the light most favorable to Hat as the party opposing summary judgment. (*Clayworth v. Pfizer, Inc.* (2010) 49 Cal.4th 758, 764.)

In July 2001, Hat, individually and as Michael Hat Farming Company, Capello, Inc., and Grapeco, Inc., filed petitions for chapter 11 bankruptcy protection under the United States Bankruptcy Code (Bankruptcy Code; 11 U.S.C.), and a bankruptcy trustee was appointed. In 2003, when proposed reorganization plans were not accepted by various creditors, the proceeding changed to a liquidation proceeding, and some of the bankruptcy estates' assets were abandoned back to Hat, including the Rampage Ranch Vineyard, Coastal Ranch Vineyard, and Pond Ranch Vineyard.

In mid-2003, Hat and Stevens entered into a verbal agreement to create a joint venture that would (1) seek to acquire additional assets from the bankruptcy estate by abandonment or by the exercise of Stevens's right of first refusal under Bankruptcy Code section 363(i) (section 363(i); 11 U.S.C., § 363(i)),[2] and (2) operate, hold, or sell such assets. The parties agreed to share any net profits after expenses and to wind up the joint venture and divide the profits and remaining property between them once the bankruptcy proceeding concluded.

Hat "contributed" the Coastal Ranch Vineyard, Rampage Ranch Vineyard, and Pond Ranch Vineyard to the joint venture, and the parties acquired the Grissom Ranch Vineyard through the exercise of Stevens's right of first refusal under section 363(i) rights. They were not successful in their attempts to acquire the Arvin Ranch Vineyard or Sedan Ranch Vineyard.

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[2] Section 363(i) essentially gave Stevens, as an owner of community property interests in the assets to be sold as part of the bankruptcy estates, a right of first refusal to purchase the assets at the price at which the assets were to be sold.

In June 2003, the bankruptcy trustee sought the approval of the bankruptcy court to sell the Capello Winery to The Wine Group (TWG). At the hearing on the sale, Stevens asserted her right of first refusal under section 363(i). She later executed a purchase agreement for the Capello Winery, and the bankruptcy court issued an order approving the sale. TWG moved for reconsideration of the order approving the sale, and in June 2004, the bankruptcy court granted the motion and vacated the sale of the Capello Winery to Stevens. (*In re Hat* (Bankr. E.D.Cal. 2004) 310 B.R. 752, 753.) The bankruptcy court held that the bidding for the Capello Winery "was chilled through collusion between [Stevens] and two potential bidders: PBI[3] and Hat" and ordered the trustee to conduct a new sale subject to certain limitations and restrictions regarding the manner in which Stevens could exercise her section 363(i) rights. (*In re Hat, supra,* 310 B.R. at pp. 758-761.) Stevens and TWG appealed the decision to the district court, which held, in an unpublished decision, that "[t]he finding that PBI and Hat colluded is not clearly erroneous. But the record does not support the finding that [Stevens] herself had the 'intention or objective to influence the price' . . . . Therefore, this finding was clearly erroneous." Stevens and TWG appealed the district court's decision to the Ninth Circuit Court of Appeals.

Meanwhile, in October 2003, Stevens filed a complaint against Hat and the trustee asserting her rights to distribution of the liquidation proceeds or community property in the Hat estate.

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[3] PBI was Phoenix Bio Industries, a lessee of the Capello Winery property.

In May 2004, TWG filed an administrative expense claim in the bankruptcy proceeding, seeking attorneys' fees and other expenses it incurred in bringing its motion for reconsideration of the order approving the sale of the Capello Winery to Stevens.

In September 2004, the trustee commenced an adversary proceeding against Stevens, Hat, and PBI for damages arising out of their collusion and violations of Bankruptcy Code section 363(n) (section 363(n); 11 U.S.C. § 363(n)) in connection with the sale of the Capello Winery.[4]

In February 2005, TWG filed a civil action in San Diego Superior Court against Hat, Stevens, and others for intentional interference with contractual relations and prospective economic advantage and conspiracy related to the sale of the Capello Winery.

In March 2005, the trustee, Hat, Stevens, TWG, and others "entered into a stipulation requesting that the Bankruptcy Court schedule a settlement conference in order to attempt a mediated settlement of various related issues and matters in the Hat Chapter 11 Case, including the [Stevens] Adversary Proceeding, the sale of the [Capello] Winery, the Ninth Circuit Appeal, and the TWG Claim and the Section 363(n) Litigation." A mediation was held in May 2005 that resulted in a Multiparty Settlement Agreement (MSA). The MSA required, among other things, that (1) the bankruptcy

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[4] Section 363(n) provides: "The trustee may avoid a sale under this section if the sale price was controlled by an agreement among potential bidders at such sale, or may recover from a party to such agreement any amount by which the value of the property sold exceeds the price at which such sale was consummated, and may recover any costs, attorneys' fees, or expenses incurred in avoiding such sale or recovering such amount."

action, the civil action brought by TWG, and Stevens's action against Hat and the trustee be dismissed with prejudice; (2) the trustee pay Stevens $2 million from the Hat estate in full satisfaction and extinguishment of all claims, interest, or rights to distribution of community property or proceeds (including the Capello Winery) and any and all rights under section 363(i); and (3) the parties dismiss all pending appeals.

The MSA included several counterparts, including a Settlement Agreement and Mutual General Release ("mutual release"). Both the MSA and the mutual release are signed by Hat and Stevens. Paragraph 3 of the mutual release, entitled "Release by Defendants[5] . . . of Each Other," reads in pertinent part: "Defendants . . . and each of them, . . . hereby release, acquit and forever discharge each of the remaining Defendants . . . from any and all claims, expenses, debts, demands, costs, contracts, liabilities, obligations, actions and causes of action of every nature, whether known or unknown, suspected or unsuspected, liquidated or unliquidated, fixed or contingent, matured or unmatured, whether in law or in equity, be they statutory or otherwise, which they have or had or may claim to have or to have had by reason of any and all matters from the beginning of time through the present, including but not limited to those arising out of or relating to events or circumstances alleged or which could have been alleged or referred to in the San Diego Action and the Bankruptcy Case, as well as any alleged act or omission which involves Defendants . . . ." The release also contained a waiver of all

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[5] Hat and Stevens are "defendants" as that term is used in the mutual release.

rights under Civil Code section 1542[6] and provided that "[a]ny and all disputes of any kind between the parties . . . , including any dispute arising out of or relating to formation, enforceability or breach of this Agreement, shall be resolved by confidential arbitration before JAMS."

After executing the mutual release, in July 2005, Stevens sent a letter to a member of the limited liability company that purchased the Pond Ranch Vineyard, referencing a prior agreement between herself and Hat and stating her intent to deed Hat half of her interest in the Pond Ranch Vineyard. On December 19, 2005, Stevens did in fact assign Hat an undivided 20 percent interest in the Pond Ranch Vineyard. Thereafter, she refused to discuss the joint venture with Hat, and Hat concluded from her conduct that she did not intend to wind down the joint venture or provide him with an accounting as previously agreed.

In September 2007, Hat initiated the instant action against Stevens for breach of contract. He later amended his complaint to include causes of action for breach of oral contract; dissolution of joint venture and accounting; imposition of a constructive trust; breach of fiduciary duty; and unjust enrichment.

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[6] Civil Code section 1542 states: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

In her answer to the first amended complaint, Stevens generally denied the allegations contained in the first amended complaint and raised various affirmative defenses, including "waiver and unclean hands."

Stevens later moved for summary judgment, arguing that Hat's "action is barred under the doctrine of unclean hands due to his collusion and misconduct pertaining to the sale of the Capello Winery and is further barred because any alleged Joint Venture must have concluded on May 11, 2005 when the MSA and [mutual release] were signed by [Hat] and [Stevens] and [Hat] waived any further rights, interest or claims in any property and/or profits pertaining to the Joint Venture."

Thereafter, Hat moved for summary adjudication as to each of Stevens's affirmative defenses on the ground such defenses "are meritless and lacking in evidentiary support." Two months later, Hat filed a motion to compel arbitration and for a stay of proceedings, arguing that to the extent Stevens's motion for summary judgment was premised on the mutual release, the mutual release required that " 'any and all disputes of any kind between the parties to this Agreement . . . shall be resolved by confidential arbitration by JAMS.' " Hat requested the trial court "stay [Stevens's] summary judgment motion proceedings pending resolution by an arbitrator over the dispositive issue of whether the Mutual Release provisions . . . [operate] as a defense and complete bar to Mr. Hat's claims against Ms. Stevens in this proceeding." He also filed an ex parte application requesting the trial court hear his motion to compel arbitration and for stay of proceedings before Stevens's motion for summary judgment, which the trial court denied.

The trial court heard Stevens's motion for summary judgment and Hat's motion for summary adjudication on September 10, 2009, and Hat's motion to compel arbitration and for a stay of proceedings on October 14, 2009.

On January 5, 2010, the trial court issued its statement of decision and order granting Stevens's request that summary judgment be entered in her favor on the ground of unclean hands. The trial court found in pertinent part that "[b]ecause the alleged joint venture agreement and its stated purpose of obtaining properties from Hat's bankruptcy estate (in the manner exemplified by the Capella [*sic*] Winery purchase) is the genesis for all five causes of action in Hat's [first amended complaint], enforcing the alleged joint venture agreement would require this court to assist in maintaining an arrangement and facilitate conduct that the [bankruptcy court] and [district court] found to be improper." With respect to Stevens's waiver theory, the trial court found that "[a]ll five causes of action in Hat's [first amended complaint] relate to the subject matter of the waiver." Relying on the letter written by Stevens referencing a prior agreement between herself and Hat and stating her intent to deed Hat half of her interest in the Pond Ranch Vineyard, the trial court found that "Hat has presented sufficient evidence to raise a triable issue of fact" as to whether the "parties intended the joint venture agreement survive the [MSA and mutual release]."

In a separate order issued the same day, the court ruled that "Hat's motion challenging Stevens'[s] affirmative defenses is now moot" as a result of the court's order granting summary judgment in Stevens's favor as to Hat's entire complaint.

On January 11, 2010, the court issued its order after hearing on Hat's motion to compel arbitration and for a stay of proceedings, finding that "[b]ecause the court granted Stevens'[s] motion for summary judgment as to Hat's entire complaint, this motion is now moot."

On February 9, 2010, the trial court entered judgment in favor of Stevens and against Hat. Notice of entry of judgment was filed on February 19, 2010. Hat filed a timely appeal from the judgment, and Stevens filed a timely cross-appeal. Hat did not separately appeal from the order denying his motion to compel arbitration and for a stay of proceedings.

DISCUSSION

Summary judgment is properly entered where an action has no merit. (Code Civ. Proc., § 437c, subd. (a).) A motion for summary judgment shall be granted where there is no triable issue as to any material fact and the moving party is entitled to a judgment as a matter of law. (*Id.*, subd. (c).) An action has no merit if a defendant establishes an affirmative defense to each and every cause of action alleged therein. (*Id.*, subd. (o).) In this case, moving party Stevens had to show that there is a complete defense to Hat's action. (*Id.*, subd. (p)(2).) Once Stevens met that burden, the burden shifted to Hat to show that a triable issue of one or more material facts exists as to that defense. (*Ibid.*) "On review, we independently assess the correctness of the trial court's ruling, applying the same legal standard as the trial court." (*Kendall-Jackson Winery, Ltd. v. Superior Court* (1999) 76 Cal.App.4th 970, 978.) We construe Stevens's papers strictly and Hat's liberally and resolve any doubts as to the propriety of granting the motion in favor of Hat.

(*Ibid.*) We may affirm the summary judgment on any correct legal theory, as long as the parties had an adequate opportunity to address the theory in the trial court. (*California School of Culinary Arts v. Lujan*, *supra*, 112 Cal.App.4th at p. 22.)

I
Summary Judgment Is Properly
Affirmed on the Ground of Waiver

Hat contends "Stevens failed to meet the heavy burden imposed on a defendant seeking summary judgment on an affirmative defense" because, among other things, she "produced no evidence whatsoever of inequitable, fraudulent or illegal conduct on the part of Mr. Hat relating to the Joint Venture." We need not determine whether the trial court erred in granting summary judgment in favor of Stevens and against Hat on the ground of unclean hands because, as we shall explain, summary judgment is properly affirmed on the alternative theory of waiver -- a theory that was briefed and argued in the trial court and on appeal.

In her limited cross-appeal, Stevens contends "the trial court erred in denying [her] motion for summary judgment on the ground of waiver" because Hat waived his claims against her by executing the mutual release. We agree and shall affirm the summary judgment on that ground. For the reasons set forth below, however, we shall dismiss Stevens's cross-appeal.

We begin with the propriety of the cross-appeal. Hat contends that "[a]lthough Ms. Stevens purports to cross-appeal from the final judgment, she is not entitled to appeal from the final judgment under [Code of Civil Procedure section] 902, because she is not a 'party aggrieved' by that judgment." Hat is correct. Code of Civil Procedure section 902

provides for an appeal by "any party aggrieved." As a general rule, a party cannot appeal from a judgment in her favor because she is not a "party aggrieved." (*Albers v. County of Los Angeles* (1965) 62 Cal.2d 250, 273 (*Albers*).) In *Albers*, the court held that "a successful party [could not] appeal from a judgment in his favor solely to attack findings of the court, which if he is successful would result in new findings being made or ordered which would themselves support the judgment, if the original findings should be held by the court on appeal to be insufficient to support it." That is precisely what Stevens's seeks to do by way of her cross-appeal. Accordingly, the cross-appeal must be dismissed.

The dismissal of the cross-appeal, however, does not preclude us from reviewing the trial court's failure to grant summary judgment on the alternative ground of waiver. As previously stated, we may affirm a summary judgment on *any* correct legal theory, as long as the parties had an adequate opportunity to address the theory in the trial court. (*California School of Culinary Arts v. Lujan*, *supra*, 112 Cal.App.4th at p. 22.) Here, the parties briefed and the trial court ruled on the waiver theory. The parties also briefed that theory on appeal.[7]

To be effective, a written release " 'must be clear, unambiguous, and explicit in expressing the intent of the subscribing parties.' [Citation.]" (*Benedek v. PLC Santa*

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[7] While Stevens's cross-appeal was improper, she was free to argue the waiver theory on appeal as an alternative basis for affirming the summary judgment. We construe her arguments in support of her cross-appeal as such, and Hat's opposition to the motion as opposing affirming the summary judgment on the alternative ground of waiver.

Monica (2002) 104 Cal.App. 4th 1351, 1356.) "The determination of whether a release contains ambiguities is a matter of contractual construction. [Citation.] 'An ambiguity exists when a party can identify an alternative, semantically reasonable, candidate of meaning of a writing. [Citations.] An ambiguity can be patent, arising from the face of the writing, or latent, based on extrinsic evidence.' [Citation.] The circumstances under which a release is executed can give rise to an ambiguity that is not apparent on the face of the release. [Citation.]" (*Id.* at p. 1357.)

The parol evidence rule, codified in Civil Code section 1625[8] and Code of Civil Procedure section 1856,[9] " 'generally prohibits the introduction of any extrinsic evidence,

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[8] Civil Code section 1625 provides that: "The execution of a contract in writing, whether the law requires it to be written or not, supersedes all the negotiations or stipulations concerning its matter which preceded or accompanied the execution of the instrument."

[9] Code of Civil Procedure section 1856 states that: "(a) Terms set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement. [¶] (b) The terms set forth in a writing described in subdivision (a) may be explained or supplemented by evidence of consistent additional terms unless the writing is intended also as a complete and exclusive statement of the terms of the agreement. [¶] (c) The terms set forth in a writing described in subdivision (a) may be explained or supplemented by course of dealing or usage of trade or by course of performance. [¶] (d) The court shall determine whether the writing is intended by the parties as a final expression of their agreement with respect to such terms as are included therein and whether the writing is intended also as a complete and exclusive statement of the terms of the agreement. [¶] (e) Where a mistake or imperfection of the writing is put in issue by the pleadings, this section does not exclude evidence relevant to that issue. [¶] (f) Where the validity of the agreement is the fact in dispute, this section does not exclude evidence relevant to that issue. [¶] (g) This section does not exclude other evidence of the circumstances under which the agreement was made or to which it relates, as defined in [Code of Civil Procedure] Section 1860, or to explain an extrinsic ambiguity or otherwise interpret the terms of the agreement, or to establish illegality or fraud. [¶] (h) As used in

whether oral or written, to vary, alter or add to the terms of an integrated written instrument.' [Citation.] The rule does not, however, prohibit the introduction of extrinsic evidence 'to explain the meaning of a written contract . . . [if] the meaning urged is one to which the written contract terms are reasonably susceptible.' [Citation.]" (*Casa Herrera, Inc. v. Beydoun* (2004) 32 Cal.4th 336, 343.) We review the trial court's determination that the proffered evidence is relevant to prove a meaning to which the language is reasonably susceptible de novo. (*Winet v. Price* (1992) 4 Cal.App.4th 1159, 1165.) Where, as here, the extrinsic evidence is not in conflict, we independently construe the writing. (*Id.* at p. 1166.)

We begin our analysis with a review of the language of the mutual release itself, which is extremely broad in scope. In that document, the parties declare their intent to release each other from *all* claims, contracts, liabilities, and obligations, *whether known or unknown, suspected or unsuspected, fixed or contingent, matured or unmatured* from the beginning of time through the execution of the release, including but not limited to those "arising out of or relating to events or circumstances alleged or which could have been alleged or referred to in the San Diego Action and the Bankruptcy Case as well as *any alleged act or omission which involves [Hat and Stevens.]*"

There is no question the joint venture agreement is a contract and that it was in existence at the time the release was executed. There likewise is no question that Stevens's obligations under the joint venture agreement, which form the basis of Hat's

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this section, the term agreement includes deeds and wills, as well as contracts between parties."

claims, existed at the time the mutual release was executed. That those obligations had not yet matured or were contingent upon the resolution of Hat's bankruptcy, does not take them outside the ambit of the mutual release, which expressly states that it applies to all claims "whether known or unknown, suspected or unsuspected, *fixed or contingent, matured or unmatured . . . .*"

Despite this broad language, Hat argues the parties did not intend to release claims arising from or related to the joint venture agreement. In support of his assertion, he relies upon extrinsic evidence, namely a letter written by Stevens two months after she executed the mutual release, which states: "The purpose of this document is to put into writing an agreement that was reached between Michael Hat and Sharon [Stevens] at a previous time. [¶] I (Sharon [Stevens]) will deed half my 40% interest in the Pond Ranch when Michael Hat is released from his bankruptcy proceedings." According to Hat, Stevens's letter constitutes an admission that "the obligations of the parties under the Joint Venture had not been extinguished by the release." Such an interpretation, however, is inconsistent with the express terms of the agreement, and thus, the evidence is inadmissible. As previously stated, "parol evidence is admissible only to prove a meaning to which the language is 'reasonably susceptible' [citation], not to flatly contradict the express terms of the agreement." (*Winet v. Price, supra,* 4 Cal.App.4th at p. 1167.) Hat's evidence violates this tenet because it seeks to prove that a release of all unknown, unmatured, or contingent claims and obligations was *not* intended to include a release of an unknown, unmatured, and contingent claim.

A review of the circumstances which attended the making of the MSA and mutual release confirms our interpretation that the release was designed to extinguish all claims extant among the parties. First, Hat was aware at the time he entered into the release of Stevens's obligations to him under the joint venture agreement. Second, it is significant that the parties did not limit the release to the disputes that were the subject of the mediation. Rather, the release specifies that it includes, but is not limited to, those claims "arising out of or relating to events or circumstances alleged or which could have been alleged or referred to in the San Diego Action and the Bankruptcy Case as well as *any alleged act or omission which involves [Hat and Stevens.]*" Lastly, both Hat and Stevens were represented by separate counsel throughout the negotiations and execution of the MSA and mutual release, fully understood and agreed to the documents' provisions, were fully aware of the documents' contents and legal effect, and did not rely on any statements not set forth therein in executing the same. Under these circumstances, we cannot give credence to Hat's claim that the parties did not intend the clear and direct language of the release to be effective. Accordingly, we shall affirm the summary judgment in Stevens's favor on the alternative ground of waiver.[10]

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[10] Because we affirm the summary judgment entered in favor of Stevens on the ground of waiver, we necessarily reject Hat's contention the trial court erred in failing to grant his motion for summary adjudication on the ground Stevens "provided no factual support" for her defenses. We also find that Hat forfeited his claim that Stevens failed to "properly plead the release that she [now] relies upon" by failing to challenge the adequacy of Stevens's pleading in the trial court. (See *Hata v. Los Angeles County Harbor/UCLA Medical Center* (1995) 31 Cal.App.4th 1791, 1805.) Had Hat objected earlier, Stevens likely would have been allowed to amend her answer. (*Ibid.*) In any event, Stevens raised "waiver" as an affirmative defense in her answer, and Hat fails to

II

We Lack Jurisdiction to Consider Whether the Trial Court Erred in Denying Hat's Motion to Compel Arbitration and for a Stay of Proceedings

Hat claims summary judgment cannot be affirmed on the ground of waiver because the mutual release contained an arbitration clause. As we shall explain, we lack jurisdiction to consider his claim.

Hat moved to compel arbitration in the trial court and for a stay of proceedings on the ground that Stevens's motion for summary judgment was premised on the mutual release, which requires that " 'any and all disputes of any kind between the parties to this Agreement . . . shall be resolved by confidential arbitration by JAMS.' " He also filed an ex parte application requesting the court hear his motion to compel arbitration and for a stay of proceedings before Stevens's motion for summary judgment, which the trial court denied. On January 5, 2010, the trial court granted summary judgment in Stevens's favor on the ground of unclean hands, and thereafter denied Hat's motion to compel arbitration as moot.[11]

An order denying a petition to compel arbitration is an appealable order. (Code Civ. Proc., § 1294, subd. (a).) "If an order is appealable, an aggrieved party must file a timely notice of appeal from the order to obtain appellate review. [Citation.] A notice of

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cite to any authority requiring a defendant to specifically plead the existence of a release in her answer in addition to waiver.

[11] The trial court presumably denied the motion as moot because the ground upon which it granted summary judgment, unclean hands, had nothing to do with the mutual release and thus did not implicate the arbitration clause contained therein.

appeal from a judgment alone does not encompass other judgments and separately appealable orders: ' "The law of this state does not allow, on an appeal from a judgment, a review of any decision or order from which an appeal might previously have been taken." ' [Citation.]" (*Sole Energy Co. v. Petrominerals Corp.* (2005) 128 Cal.App.4th 212, 239; see also Code Civ. Proc., § 906.) "The notice of appeal is sufficient 'if it identifies the particular judgment or order being appealed.' [Citation.] ' "[W]here several judgments and/or orders occurring close in time are separately appealable (e.g., judgment and order awarding attorney fees), each appealable judgment and order must be expressly specified--in either a single notice of appeal or multiple notices of appeal--in order to be reviewable on appeal." ' [Citations.]" (*Sole Energy Co. v. Petrominerals Corp., supra,* 128 Cal.App.4th 212, 239.)

Hat's notice of appeal only mentions the judgment; it does not specify the order denying his motion to compel arbitration. Hat's failure to appeal from that order precludes review. (*Hobbs v. Bateman Eichler, Hill Richards, Inc.* (1985) 164 Cal.App.3d 174, 190-191.)

Hat attempts to avoid this result by recharacterizing the "nature" of the trial court's ruling. According to Hat, "[i]n substance, the Trial Court's ruling was not a denial of the motion to compel arbitration, but a ruling on the order in which the Court should schedule and determine motions." Hat asserts that "[t]here is no authority for the proposition that a Trial Court's ruling on a scheduling or calendar matter is immediately appealable," "[t]hus, this Court can review the Trial Court's refusal to rule on the motion to compel arbitration" before the summary judgment motion.

The problem with Hat's argument is that the trial court did not simply decline to hear the motion to compel arbitration before the summary judgment motion, it *ruled* on the motion to compel arbitration and for a stay of proceedings, denying it as moot. The trial court's failure to hear the motion to compel arbitration and for a stay of proceedings before the motion for summary judgment, even if in error, did not excuse Hat from his obligation to separately appeal from the trial court's order denying his motion. Having failed to do so, we are precluded from reviewing it on appeal.

DISPOSITION

The summary judgment entered in Stevens's favor and against Hat is affirmed.[12] Stevens's cross-appeal is dismissed. Stevens shall recover her costs on appeal. (Cal. Rules of Court, rule 8.278(a).)

BLEASE, Acting P. J.

We concur:

NICHOLSON, J.

BUTZ, J.

[12] Because we affirm the summary judgment in Stevens's favor, we need not consider whether the trial court erred in granting summary adjudication in her favor.